

R E M A R K S

In the Office Action dated August 3, 2009, informalities were noted in claims 16 and 18. In view of the cancellation of claim 16, the objection to claim 16 is moot. Claim 18 has been amended to correct the informality.

Claims 11-20 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite because the Examiner stated the phrase "extending toward said x-ray C-arm" is unclear. In view of the other changes that have been made in claim 11, this phrase has been cancelled, and amended claim 11 and all claims depending therefrom are submitted to be in full compliance with all provisions of 35 U.S.C. §112, second paragraph.

Claims 11-14 and 18-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Burkhardt et al., alone or in view of Kaltschmidt et al. In response, independent claim 1 has been amended to state that the shockwave head is part of a therapy device that has a therapy C-arm on which the shockwave head is mounted, with the therapy C-arm being mounted to the same base support as the x-ray C-arm and being laterally spaced therefrom, so that the therapy C-arm is parallel to and spaced from the orbital plane occupied by the x-ray C-arm in the base position of the x-ray C-arm. The boom is stated to have fixed end connected to the therapy C-arm and, as in the original language of claim 11, is stated to have a free end at which the shockwave head is attached. The boom is orbitally movable by the therapy C-arm to arbitrarily position the shockwave head in the orbital plane within an angle range of at least 180° above and below the patient table, and aligned to the isocenter.

No such structure is disclosed or suggested by a combination of the teachings of Burkhardt et al. and Kaltschmidt et al.

The Burkhardt et al. reference does not disclose a therapy C-arm that is movable in the manner set forth in claim 11. There is boom with a fixed end connected to a therapy C-arm, wherein the therapy C-arm itself is orbitally movable. In the Burkhardt et al. reference, the component that the Examiner has equated with the "boom" in claim 11 of the present application has a movable end that moves on the C-arm of the therapy device. The C-arm of the therapy device in the Burkhardt et al. reference is not orbitally movable. Orbital movement inherently means movement in both directions along an orbit, in order to accomplish the positioning described in the last element of claim 11.

The Kaltschmidt et al. reference has an effective date for use as prior art as of the date that it is accorded under §371(c), which is August 7, 2006. The corresponding published PCT application (which was not cited by the Examiner) has an effective date for use as prior art in the United States as of its PCT publication date, which is September 9, 2005.

The present application claims the benefit of convention priority under 35 U.S.C. §119 based on a German application filed on March 1, 2004. The Examiner has indicated that the certified copy of the priority document has been received, and Applicants herewith submit a certified translation of the priority document in order to perfect their claim for convention priority. Therefore, neither the Kaltschmidt et al. reference (i.e., United States Patent No. 7,493,155), nor the counterpart PCT application, is available as prior art against the subject matter of the present application.

Therefore, in view of the changes made to independent claim 11, the subject matter described in that claim would not have been obvious to a person of ordinary skill in the field of designing shockwave therapy systems with x-ray imaging capability, under the provisions of 35 U.S.C. §103(a), based on Burkhardt et al. alone, and the possibility of modifying the Burkhardt et al. teachings in accordance with the Kaltschmidt et al. is precluded by Applicants' perfection of convention priority. The rejection under 35 U.S.C. §103(a) of claims 15 and 16 is moot in view of the cancellation of those claims.

The above arguments apply to the rejection of claim 17 as well, which was rejected under 35 U.S.C. §103(a) as being unpatentable over Burkhardt et al., alone or in view of Kaltschmidt et al., further in view of Einans et al. The Examiner relied on the Einans et al. only for the purpose of disclosing material that is permeable to x-ray radiation, and therefore even if the Burkhardt et al. reference were modified in accordance with that teaching, the subject matter of claim 17 still would not result, for the reasons discussed above in connection with independent claim 11, from which claim 17 depends.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,



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